APPENDIX 1.

In the United States District Court for the
Middle District of Alabama,
Eastern Division.

Anthony T. Lee et al., Plaintiffs,
United States of America,
Plaintiff-Intervenor and
Amicus Curiae,
vs.
Macon County Board of Education
et al., Defendants.

Civil Action.
No. 604-E.

Writ of Injunction.

To: The Bibb County Board of Education; S. E. Belcher, Jr., President of the Bibb County Board of Education; Ellington P. Jones, Henry Bolding, Britt Cox, and C. E. Hornsby, Jr., Members of the Bibb County Board of Education; and Francis B. Pratt, Superintendent of Schools of Bibb County:

Take Notice that you and each of you, together with your officers, agents, employees, successors and all persons in active concert or participation with you who shall receive notice of this order, be and you are hereby Enjoined as more particularly set out in the Order made and entered by this Court in this cause on this date, a copy of which is hereby served upon you.

Witness my hand and the seal of this Court on this the 18th day of May, 1967.

R. C. Dobson,
Clerk of the United States District
Court for the Middle District of
Alabama,

By: Jane P. Gordon,
Deputy Clerk.

In the United States District Court
For the Middle District of Alabama,
Eastern Division.

Anthony T. Lee et al., Plaintiffs,

United States of America,
Plaintiff-Intervenor and
Amicus Curiae,

vs.

Macon County Board of Education
et al., Defendants.

Civil Action.
No. 604-E.

Order.

(Filed May 18, 1967, R. C. Dobson, Clerk.)

This cause having regularly come on for hearing on the Order of this Court of April 24, 1967, requiring the defendant school officials of Autauga County, Bibb County, Cullman County and Pickens County to show cause why they should not be ordered to adopt desegregation plans meeting the standards embodied in this Court's Order of March 22, 1967, upon the motion of the defendant state officials to drop said local school officials as party defendants, and upon the objections of the Bibb County Board of Education and its members to the motion of the United States for the said Order to Show Cause, and the parties having appeared by counsel, and the Court having received evidence and having heard argument of counsel, and

It appearing to the Court that:

1. The Autauga County Board of Education has adopted a plan of desegregation conforming in all regards to the model desegregation plan attached as Exhibit "A" to the Order of this Court of March 22, 1967 and has transmitted such plan by letter of April 27, 1967 from its counsel to

State Superintendent Ernest Stone who in turn has submitted the plan to this Court.

2. By letter of May 1, 1967, the Superintendent of Schools of Cullman County transmitted to this Court a supplement to its desegregation plan, previously adopted, stating that, commencing with the 1967-68 school year, the Cullman County Board of Education would close the only traditionally Negro school maintained by the Board in the County and would transfer all of the Negro teachers presently assigned to that school to schools heretofore maintained for white students. By further letter of May 8, 1967, from the Superintendent of Schools of Cullman County to this Court and by statements made by their counsel in open Court open the hearing of these motions, the Board of Education of Cullman County has assured that all Negro students residing within the territorial limits of the Cullman County School System will be educated in the schools of Cullman County.

3. The Pickens County Board of Education on May 12, 1967, filed with this Court an answer to the Show Cause Order attaching a desegregation plan which was adopted by the Pickens County Board of Education on May 9, 1967, and which conforms in all respects with the model plan attached as Exhibit "A" to the Order of this Court of March 22, 1967.

4. The Bibb County Board of Education, its members, and the Superintendent of Schools of Bibb County have filed no response to the Order to Show Cause other than the "Objections" heretofore referred to and have offered no evidence to show cause why the Bibb County Board of Education should not be ordered to adopt and implement a plan of desegregation, other than the statement by their counsel that the Board has since March 22, 1967, directed certain questionnaires to the students and teachers in the Bibb County School System. The deposition of the Super-

intendent of Schools of Bibb County, which was offered into evidence by the United States upon the hearing and has been received by the Court, establishes that the Board of Education of Bibb County is operating a dual school system based on race, under which it maintains separate schools for Negro students, staffed solely by Negro personnel and attended solely by Negro students, and maintains separate schools for white children, staffed solely by white personnel and attended solely by white students. The Board maintains separate bus transportation systems for Negro and white students. The Board has failed to adopt any plan for the assignment of students on a nonracial basis meeting the requirements of this Court's Order of March 22, 1967, nor has it adopted any plan or taken any effective steps for the desegregation of the faculty or staff of the schools nor for the desegregation of the transportation systems. Counsel for the Board does not dispute these facts.

And the Court being of the view that:

1. This Court has jurisdiction of the subject matter raised by the Order to Show Cause, whether viewed as a proceeding ancillary to the main proceeding in this cause, or as a separate claim properly joinable with such main proceeding.

2. This Court has jurisdiction of the parties named in the Show Cause Order, and venue of the matters raised by that Order is properly in this Court.

3. The issues raised by the Show Cause Order with respect to the defendant boards and officials of Autauga County, Cullman County and Pickens County have become moot by their actions above described.

4. The failure of the defendant board and officials of Bibb County to adopt a plan of desegregation or otherwise take effective action to disestablish the dual system in

Bibb County based on race and color violates the duty of said Board and officials under the 14th Amendment to the Constitution and prevents the full effectuation of this Court's Order of March 22, 1967.

Now Therefore It Is Ordered:

1. The Motion of Lurleen B. Wallace, the Alabama State Board of Education, its members, and Ernest Stone to drop parties defendant is Denied.

2. The Objection of the Bibb County Board of Education, its members and Francis B. Pratt to the motion of the United States is Overruled.

3. The defendant boards of education and officials of Autauga County, Cullman County, and Pickens County are discharged as parties defendant upon the ground that the issues raised by the Order to Show Cause are now moot as to them.

4. The Bibb County Board of Education, S. E. Belcher, Jr., President, and Ellington P. Jones, Henry Bolding, Britt Cox and C. E. Hornsby, Jr., members of the Bibb County Board of Education and Francis B. Pratt, Superintendent of Schools of Bibb County, together with their officers, agents, employees, successors and all persons in active concert or participation with them are enjoined to adopt a desegregation plan for the Bibb County School System in the form attached to this Order and to fully carry out such plan.

Done this 18th day of May, 1967.

/s/ Richard T. Rives,
United States Circuit Judge,

/s/ H. H. Grooms,
United States District Judge,

/s/ Frank M. Johnson, Jr.,
United States District Judge.

DESEGREGATION PLAN.

The Bibb County Board of Education will take the following affirmative action to disestablish all state enforced or encouraged public school segregation and to eliminate the effects of past state enforced or encouraged racial discrimination in the operation of the school system:

I

Exercise of Choice.

The following provisions will apply to all grades commencing with the 1967-68 school year:

A. **Who May Exercise Choice.** A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this plan to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

B. **Annual Exercise of Choice.** All students, both white and Negro, will be required to exercise a free choice of schools annually.

C. **Choice Period.** The period for exercising choice will commence May 22, 1967 and end June 9, 1967, and in subsequent years will commence March 1 and end March 31 preceding the school year for which the choice is to be exercised. No student or prospective student who exer-

cises his choice within the choice period will be given any preference because of the time within the period when such choice was exercised.

D. **Mandatory Exercise of Choice.** A failure to exercise a choice within the choice period will not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens will be assigned to the school nearest his home where space is available under standards for determining available space which will be applied uniformly throughout the system.

E. **Public Notice.** On or within a week before the date the choice period opens, the school board will arrange for the conspicuous publication of a notice describing the provisions of this plan in the newspaper most generally circulated in the community. The text of the notice will be substantially similar to the text of the explanatory letter sent home to parents. Publication as a legal notice will not be sufficient. Copies of this notice will also be given at that time to all radio and television stations serving the community. Copies of this plan will be posted in each school in the school system and at the office of the Superintendent of Education.

F. **Mailing of Explanatory Letters and Choice Forms.** On the first day of the choice period there will be distributed an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the school board) of each student, together with a return envelope addressed to the Superintendent. The text for the explanatory letter and choice form will essentially conform to the sample letter and choice form appended to this plan.

G. **Extra Copies of the Explanatory Letter and Choice Form.** Extra copies of the explanatory letter and choice form will be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

H. **Content of Choice Form.** Each choice form will set forth the name and location of and grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent, or where appropriate the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, will be required or requested.

I. **Return of Choice Form.** At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

J. **Choices Not on Official Form.** The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

K. **Choice Forms Binding.** When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices for their children under the conditions set forth in paragraph I-A of this plan and in exceptional cases where, absent the consideration of race, a change is edu-

cationally called for or where compelling hardship is shown by the student.

L. **Preference in Assignment.** In assigning students to schools, no preference will be given to any student for prior attendance at a school and except with the approval of the State Superintendent of Education in extraordinary circumstances, no choice will be denied for any reason other than overcrowding. In case of overcrowding at any school, preference will be given on the basis of proximity of the school to the home of the students choosing it, without regard to race or color. Standards for determining overcrowding will be applied uniformly throughout the system.

M. **Second Choice Where First Choice Is Denied.** Any student whose choice is denied will be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student will have seven days from the receipt of notice of a denial of first choice in which to exercise a second choice.

N. **Transportation.** Where transportation is generally provided, buses will be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing the school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is at least two miles from his residence. The school system will adopt non-discriminatory bus routes and criteria governing the availability of bus transportation to students, so that race will not be a basis for assigning students to school buses and overlapping and duplicative bus routes based on race will be eliminated. Prior to the choice period, parents and children will be advised that such routes and criteria will be

adopted, and substantially prior to the opening of the 1967-68 school year the parents and children will be notified of the routes and criteria, in a readily understandable manner.

O. **Officials Not to Influence Choice.** At no time shall any official, teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any persons because of a choice made. If the school board employs professional guidance counselors, such persons will base their guidance and counseling on the individual student's particular personal, academic, and vocational needs. Such guidance and counseling by teachers as well as professional guidance counselors will be available to all students without regard to race or color.

P. **Protection of Persons Exercising Choice.** Within their authority, school officials are responsible for the protection of persons exercising rights under or otherwise affected by this plan. They will, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference will include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board will not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this plan. If officials of the school system are not able to provide sufficient protection, they will seek whatever assistance is necessary from other appropriate officials.

II.

Prospective Students.

Each prospective new student will be required to exercise a choice of schools before or at the time of enroll-

ment. Each such student known to the school system will be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Where there is no preregistration procedure for newly entering students, copies of the choice forms will be available at the office of the Superintendent and at each school during the time the school is usually open.

III.

Services, Facilities, Activities and Programs.

No student will be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by or affiiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis will not be subect to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, nonracially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, will be open to all persons without regard to race or color. All special educational programs conducted by the school system will be conducted without regard to race or color.

IV.

School Equalization.

A. **Inferior Schools.** In schools heretofore maintained for Negro students, the school system will take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white persons. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios will, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school will be closed as soon as possible, and the students enrolled in the school will be reassigned on the basis of freedom of choice. By October of each year, the school board will report to the State Superintendent of Education pupil-teacher ratios, pupil-classroom ratios, and per-pupil expenditures both as to operating and capital improvement costs, and will outline the steps to be taken and the time within which they will accomplish the equalization of such schools.

B. **Remedial Programs.** The school system will provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

V.

School Construction and Consolidation.

To the extent consistent with the proper operation of the school system as a whole, the school board will, in

locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the object of eradicating past discrimination and of effecting desegregation. The school board will not build, consolidate or expand schools based on recommendations of any state survey conducted prior to March 1967 unless the state reapproves such building, consolidation or expansion. The school board will not fail to consolidate schools because desegregation would result.

VI.

Faculty and Staff.

A. **Faculty Employment and Assignment.** Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race will be taken into account for the purpose of correcting the effect of the past segregated assignment of teachers in the dual system. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers will be assigned so that more than one teacher of the minority race (white or Negro) will be on a desegregated faculty. The school board will take affirmative steps to accomplish the desegregation of its school faculties, including substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year. The objective of the school system is that the pattern of teacher assignment to any particular school shall not be indentifiable as tailored for a heavy concentration of either Negro or white pupils in the school. The school system will accomplish faculty desegregation in a manner whereby the abilities, experience, specialties, and other qualifications of both white and Negro teachers in the system

will be, insofar as administratively feasible, distributed evenly among the various schools of the system.

B. **Dismissals.** Teachers and other professional staff members will not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system will be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system will be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the State Superintendent of Education.

VII.

Reports.

A. **Report on Choice Period.** The school system will file with the State Superintendent of Education on or before June 10 of each year a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report will also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

B. **Report After School Opening.** The system will file with the State Superintendent of Education within 15

days after the opening of schools for the fall semester of each year a report setting forth the following information:

(1) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken on his request and the reasons therefor.

(2) The number of faculty vacancies, by school, that have occurred or been filled since the adoption of this plan or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(3) The number of students by race, in each grade of each school.

EXPLANATORY LETTER.

(School System Name and Office Address)

(Date Sent)

Dear Parent:

All grades in our school system will be desegregated next school year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all white or all Negro. It does not matter which

school your child is attending this year. You and your child may select any school you wish.

Every student, white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by June 9, 1967.* You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the office of the Superintendent at any time between May 22 and June 9. No one may require you to return your choice form before June 9, and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. The school board is rerouting buses and writing new rules for assigning stu-

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* In subsequent years the dates in both the explanatory letter and the choice form should be changed to conform to the choice period.

dents to buses, so that there will be no more overlapping bus routes and students will be assigned to buses without regard to race. (Delete if the school system does not provide transportation.)

Your school board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely,

Superintendent.

CHOICE FORM.

This form is provided for you to choose a school for your child to attend next school year. You have 18 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or a Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent (address), by June 9, 1967. A choice is required for each child.

Name of child .....
(Last (First) (Middle)

Address .....

Name of parent or other
adult serving as parent .....

If child is entering first grade, date of birth:

.....
(Month (Day) (Year)

Grade child is entering .....

School attended last year .....

Choose one of the following schools by marking an X beside the name.

	Name of school	Grades Offered	Location
( )	.....	.....	.....
( )	.....	.....	.....

(All schools in the district, the grades offered by each, and the location of each will be listed on the form prior to its distribution to parents and students.)

Signature .....

Date .....

.....

.....

To be filled in by Superintendent:

School assigned .....

APPENDIX 2.

In the United States District Court for the Middle District of Alabama.

Anthony T. Lee et al., Plaintiffs,

United States of America, Plaintiff-Intervenor and Amicus Curiae,

vs.

Macon County Board of Education et al., Defendants.

Civil Action. No. 604-E.

Objection of the Bibb County Board of Education, Ellington P. Jones, Henry Boulding, Britt Cox, C. E. Hornsby, Jr., and Francis B. Pratt, to the Motion of the United States.

The Bibb County Board of Education and the individuals above named hereby object to the motion of the United States and say that the motion should be dismissed or overruled and as grounds hereof assign the following, separately and severally:

1. This Court has no jurisdiction on the motion of the United States in this proceeding, to require the said Board or the individuals to submit a plan of desegregation as called for in said motion.

2. Said Bibb County Board and each of the said individuals are residents only of Bibb County, Alabama, in the Northern District of Alabama, and there is improper venue as to each of them, in this proceeding, within the meaning of Section 1391, Title 28, United States Code Annotated.

3. The said motion is merely a supplementary, and not an original, proceeding and there is no sufficient showing

that this Court has jurisdiction to require the said Board and individuals to show cause why the said plan of desegregation should not be put into effect.

4. This Court was without jurisdiction to enter an order directing the State Superintendent of Education to direct the said Board to file said plan of desegregation, in its decree heretofore rendered (said Board having not been made a party to the said cause at the time), and this Court has now no jurisdiction to require this Board to submit such plan, or to show cause why it should not submit such a plan.

5. Requiring this Board in this procedure to submit such plan of desegregation, or to show cause why it should not do so, is not within the purview of the legal authority for appointing a three-judge court to pass upon the constitutionality of a state act (or the provision providing for granting tuition by the local boards to pupils to attend private schools), or of the purpose for designating such Court or for which such Court could have been designated.

6. This Board is an independent agency of the State of Alabama, vested by its laws with the sole power to assign or hire teachers, or to assign students, under the supervision of said Board, and this Board is not properly joined in this action, for reasons of improper venue and for other legal reasons.

7. The said motion, and the summons and order of the Court pursuant thereto, do not sufficiently inform the said Board and the said individuals as to the manner and extent in which or to which it is required to answer at this time.

8. This Board, and said individuals, cannot be legally required, and should not be required, to submit a plan of desegregation or to show cause why it should not submit one, without an original suit and hearing thereon.

9. The said Board and said individuals are not properly joined as defendants or respondents in this action under Rule 20, Federal Rules of Civil Procedure, or otherwise.

10. The said motion of the United States fails to state a claim against the said Board and the said individual objectors above named, upon which relief can be granted.

Since Rule 12 (b) of the Rules of Civil Procedure allow the filing by a defendant or defendants of a motion raising the defenses set forth in said Rule, as a preliminary responsive pleading, this said Board and the said individuals pray that the above objection, and each ground thereof, separately and severally, be treated in the alternative and separately as such a motion.

George P. White,
Centreville, Alabama,

Reid B. Barnes,
Exchange Security Bank Building,
Birmingham, Alabama 35203,

Attorneys for the Bibb County Board of Education, and the individual objectors above named.

APPENDIX 3.

The following questions are presented by this appeal: Did the Court err by taking the actions listed below?

1. Granting a permanent mandatory judgment in the Order of March 22, 1967; compelling the original defendants to act so as to materially and adversely affect the rights of the appellant, The Bibb County Board of Education, although said appellant had not been served with process and was not actually or constructively before the Court—all in violation of the Constitution of the United States and particularly the due process clause of the Fifth Amendment.

2. Granting a mandatory injunction requiring the appellant, The Bibb County Board of Education, to adopt the specific plan of desegregation attached to the said Order and Judgment of the District Court from which this appeal is taken, filed May 18, 1967, contrary to the Constitution of the United States and particularly the Tenth and Eleventh Amendments thereof, and in violation of the Constitutional separation of governmental powers between the United States of America and the States, and also such separation of powers between the judicial, executive and legislative branches of the States and the United States.

3. Entering the Order filed April 24, 1967, adding the appellant, The Bibb County Board of Education, and the individual appellants named in this Notice of Appeal, to show cause why said Board of Education and its members should not be required to adopt the plan of desegregation above described, and thereby improperly joining said The Bibb County Board of Education as a party defendant after the final judgment of March 22, 1967, had been entered, such joinder not being in proper imple-

mentation or enforcement of the said Judgment of March 22, 1967.

4. Entering the Order filed April 24, 1967, adding the appellant, The Bibb County Board of Education, and the individual appellants named in this Notice of Appeal, to show cause why said Board of Education and its members should not be required to adopt the plan of desegregation above described, and thereby improperly joining said The Bibb County Board of Education as a party defendant after the final judgment of March 22, 1967, had been entered, such joinder not being authorized either under § 1391, Title 28, United States Code, or any other venue statute, and not being proper under Rule 20 of the Federal Rules of Civil Procedure, or any other statute of rule.

5. In overruling by the said Order and Judgment of May 18, 1967, above described, the Objection of the said defendant, The Bibb County Board of Education, and the other individual appellants named herein, to the Motion of the United States (characterized as an "Objection"), and in the alternative the Motion under Rule 12 (b), Rules of Civil Procedure.

6. Holding by the Order and Judgment filed May 18, 1967, that the Court had jurisdiction of the cause presented by the Motion of the United States filed April 22, 1967.

7. Holding by the Order and Judgment filed May 18, 1967, that the Court had venue of the cause presented by the Motion of the United States filed April 22, 1967.

8. Holding by said Decree that the Court had jurisdiction of the defendant, The Bibb County Board of Education, and the individuals named herein as appellants.

9. Holding by said Decree that the Court had venue of the defendant, The Bibb County Board of Education, and the individual appellants named in this notice, all

of whom were shown without dispute to be residents of the Northern District of Alabama.

10. Holding by said Decree that the defendant, The Bibb County Board of Education, and the individual appellants named in this Notice, were properly joined as parties defendant.

11. In overruling in the hearing on May 13, 1967, before this Court the objection of the defendant, The Bibb County Board of Education, and the other individual defendants, to the introduction of the deposition of the Superintendent of Schools of Bibb County, and in receiving said deposition in evidence over said objection, such deposition having been taken prior to any addition of said The Bibb County Board of Education and the other appellants named in this notice, were added or made parties defendant, and their being no representation of these appellants or presence of them or their representatives at the taking of said deposition.

12. Holding by said Order and Judgment, filed May 18, 1967, that the Motion of the United States seeking to require said The Bibb County Board of Education to show cause why the said plan of desegregation should not be filed, stated a claim upon which relief could be granted.